

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TIANTIAN ZHAI,

Plaintiff,

v.

STEVENS INSTITUTE OF
TECHNOLOGY,

Defendant.

Civil Action No.: 12-1504 (JLL)

ORDER

LINARES, District Judge.

THIS MATTER comes before the Court by way of Defendant Stevens Institute of Technology's motion to dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 37, for failure to participate in the discovery process. This Court referred Defendant's motion to the Honorable Michael A. Hammer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636 (b)(1)(B). Judge Hammer filed a Report and Recommendation in connection with the motion to dismiss on October 10, 2013. In particular, Judge Hammer recommended that the undersigned dismiss Plaintiff's Complaint without prejudice. On October 23, 2013, Plaintiff filed a "response" to Judge Hammer's Report and Recommendation. In his response, Plaintiff requested that the undersigned accept Judge Hammer's Report and Recommendation, but, in addition, toll the applicable statute of limitations for one year to allow Plaintiff to re-file his claim if certain conditions are met. In a reply filed on November 8, 2013, Defendant argued that equitable tolling of the statute of limitations is not warranted in the instant matter. Since the issue of equitable tolling of the applicable statute of limitations was not presented to Judge Hammer in the first

instance, this court remanded the matter to Judge Hammer so that he could consider it and incorporate it into his Report and Recommendation. In his February 7, 2014 Report and Recommendation incorporating the issue of equitable tolling, Judge Hammer recommended that this matter be dismissed without prejudice and that Plaintiff be allowed to refile his Complaint if Plaintiff returns to the country within six months of this Court's order adopting the Report and Recommendation. To date, the Court has received no objection with respect to Magistrate Judge Hammer's Report and Recommendation, and for good cause shown,

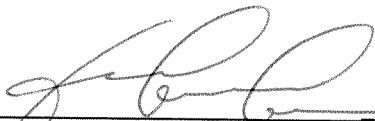
IT IS on this 11 day of March, 2014,

ORDERED that the Report and Recommendation of Magistrate Judge Hammer, filed on February 7, 2014 [Docket Entry No. 24], is hereby **ADOPTED** as the findings of fact and conclusions of law of this Court; and it is further

ORDERED that defendants' motion to dismiss [Docket Entry Nos. 17] is **granted**, and the Complaint [Docket Entry No. 1] is **dismissed without prejudice**; and it is further

ORDERED that Plaintiff may refile his Complaint if Plaintiff returns to the country within six months of the date of this order.

IT IS SO ORDERED.



Jose L. Linares
United States District Judge